

# ISSUE

**ANSWER**

## FACTS

## DISCUSSION

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

SCR 60.05(1)(a) and (b) state:

A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:

- (a) Cast reasonable doubt on the judge's capacity to act impartially as a judge.
- (b) Demean the judicial office.

The commentary to SCR 60.03(1) explains:

Restrictions on the personal conduct of judges cannot, however, be so onerous as to deprive them of fundamental freedoms enjoyed by other citizens. Care must be taken to achieve a balance between the need to maintain the integrity and dignity of the judiciary and the right of judges to conduct their personal lives in accordance with the dictates of their individual consciences.

In striking this balance the following factors should be considered:

- (a) the degree to which the personal conduct is public or private;
- (b) the degree to which the personal conduct is a protected individual right;
- (c) the potential for the personal conduct to directly harm or offend others;
- (d) the degree to which the personal conduct is indicative of bias or prejudice on the part of the judge;
- (e) the degree to which the personal conduct is indicative of the judge's lack of respect for the public or the judicial/legal system.

The committee has weighed the factors outlined in the above commentary. As to the first factor, the production is performed in a public facility, but only those wishing to attend will view the production.

Second, the proposed personal conduct is a protected individual right. To perform in this type of production is an exercise of religious freedom enjoyed by other citizens.

Upon examining the third factor we conclude the potential for this proposed personal conduct to directly harm or offend others is relatively small. Those who choose to attend this production are not likely to be harmed or offended by the judge's participation in the production.

The fourth factor to be considered relates to bias or prejudice which the public may perceive the judge to have. The committee recognizes that the judge's participation in a Christian oriented production may be seen as indicative of bias or prejudice on religious issues. This is a factor that a judge should carefully consider before engaging in religious oriented conduct that may be observed by the public.

Finally, the proposed conduct does not indicate the judge's lack of respect for the public or the judicial system. Because the judge has participated in this production for many years prior to becoming a judge, it is clear that the judge has not been asked to participate in the production because of the judge's status. The judge's title is not associated with the performance or production in any way. Therefore, the judge's participation does not demean the judicial office in any manner.

Having balanced all of the above factors, we conclude that the proposed conduct as outlined in this request does not violate the above sections of the Code.

***B. 60.05(3)(c)2d***

SCR 60.05(3)(c)2d states:

[A judge in any capacity] may not use or permit the use of the prestige of judicial office for fund raising or membership solicitation.

The production in this case is not a fund raising event. Tickets are not sold for the performances. Although baskets are placed at the exits for voluntary donations, fund raising is not the purpose of the event. Since the judge's title is not listed in any written materials, the judge's position and prestige of the judicial office are not associated with the production in any way. The committee concludes that participation in this production does not violate the prohibition against fund raising activities.

## **CONCLUSION**

A judge may appear in an ecumenical community Easter production, as long as the judge's title is not associated in any manner with the promotion or production of the event, and as long as the purpose of the event is not to raise funds.

## **APPLICABILITY**

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60--Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 99-2 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin, this 14th day of April, 1999.

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Thomas H. Barland  
Chair